

1 JOSEPH C. BUTNER, SBN 005229  
Deputy County Attorney  
2 [YCAO@co.yavapai.az.us](mailto:YCAO@co.yavapai.az.us)

3 Attorneys for STATE OF ARIZONA  
4

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2011 JAN 13 PM 4:18 ✓

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BY: \_\_\_\_\_

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6 IN AND FOR THE COUNTY OF YAVAPAI

7 STATE OF ARIZONA,

8 Plaintiff,

9 vs.

10 STEVEN CARROLL DEMOCKER,

11 Defendant.  
12

CAUSE NO. P1300CR201001325

STATE'S MOTION FOR  
CLARIFICATION OF RULING RE:  
NOTICE

Assigned to Honorable David L. Mackey

13 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and  
14 her deputy undersigned respectfully submits its motion for a clarification of the Presiding Judges  
15 Ruling re: Notice filed January 11, 2011. The State's motion is supported by the following  
16 Memorandum of Points and Authority.  
17

18 It is the State's position that a judge noticed pursuant to Rule 10.2 ARCP cannot make  
19 rulings of law in the case pursuant to Rule 10.6 ARCP.

20 Rule 10.6

21 When a motion or request for change of judge is timely filed under this rule, **the**  
22 **judge shall proceed no further in the action, except to make such temporary**  
23 **order as may be necessary in the interest of justice** before the action can be  
transferred to the presiding judge or the presiding judge's designee.  
(Emphasis added).  
24

25 Generally, the disqualification of a judge does not prevent him from performing ministerial  
26 acts not involving judicial discretion. *State v Miranda*, 3 Ariz.App. 550, 416 P.2d 444 (1966). An  
**act is ministerial** where the law requiring it to be performed prescribes the time, manner, and

1 occasion of its performance with such certainty that nothing remains for judgment or discretion.  
2 *Magma Copper Co. v. Arizona State Tax Commission*, 67 Ariz. 77, 85, 191 P.2d 169, 174 (1948).

3 Any other act or decision following a 10.2 notice would appear to violate Rule 10.6.

4 **Conclusion:**

5 Rule 10.6 is unambiguous and supports the State's position that Defendant's Objection to  
6 Notice of Judge cannot be heard by Judge Darrow. Under the law the presiding Judge must decide  
7 the issue or reassign the case to a Judge other than Judge Darrow.  
8

9 The State requests that the right to change of judge be preserved pursuant to Rule 10.4 (a)  
10 ARCP.

11 The State requests that Judge Darrow be precluded from ruling on the Defendant's  
12 Objection to Notice of Judge and State's Response to Defendant's Objection to Notice of Judge in  
13 accordance with Rule 10.6.  
14

15 **RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of January, 2011.  
16

17  
18 **Sheila Sullivan Polk**  
19 **YAVAPAI COUNTY ATTORNEY**

20  
21 By: Joseph C. Butler (for)  
22 **Joseph C. Butler**  
23 Deputy County Attorney  
24

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Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

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**COPY** of the foregoing Emailed this  
13<sup>th</sup> day of January, 2011, to:

Honorable David L. Mackey  
Presiding Judge  
Yavapai County Superior Court  
(via email)

Honorable Warren R. Darrow  
Division PTB  
Yavapai County Superior Court  
(via email)

Craig Williams  
Attorney for the defendant  
Yavapai Law  
3681 N. Robert Rd  
Prescott Valley, AZ 86314  
yavapailaw@hotmail.com  
(via email)

Greg Parzych  
222 No. Central Ave.  
Phoenix, AZ 85004  
Co-counsel for the defendant  
gparzlaw@aol.com  
(via email)

Christopher B. DuPont  
Trautman DuPont  
245 West Roosevelt, Suite A  
Phoenix, AZ 85003  
Attorney for victims  
Katherine and Charlotte DeMocker  
(via email)

By: R. Drubb